IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION NO. 3:92-CR-35-5H

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ORDER)	AMERICA,	ATES OF	UNITED
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This matter is before the court on petitioner's motion to vacate his conviction in Count Two for using or carrying a firearm during and in relation to a drug trafficking crime, 18 U.S.C. § 924(c). The government moved to dismiss petitioner's motion, and petitioner replied. This matter was referred to United States Magistrate Judge Kimberly A. Swank for hearing. Prior to the scheduled hearing, the government filed a Notice [DE #144] indicating its agreement that this matter should be resolved in the same way as in the Fort and Wilson matters (petitioner's codefendants). [DE #188]. Respondent therefore

agrees that count Two should be vacated and seeks to withdraw its motion to dismiss.

The court has carefully reviewed this matter and with the government's consent, Count Two of petitioner's convictions is hereby VACATED. The hearing scheduled for October 16, 2014, is hereby cancelled. The United States Probation Office is directed to prepare an updated presentence memo. This matter is hereby set for re-sentencing at this court's November 12, 2014, term.

This 14 day of October 2014.

Malcolm J. Howard

Senior United States District Judge

At Greenville, NC #26